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Attorneys for Plaintiff
NICHOLAS BART ELLIS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NICHOLAS BART ELLIS,

Plaintiff,

vs.

A. NAVARRO, et al.,

Defendants.

No. C 07-5126 SBA (pr)

**STIPULATION AND [PROPOSED]
ORDER MODIFYING DATES IN
ORDER FOR PRETRIAL
PREPARATION**

Courtroom: 1

Judge: Hon. Sandra Brown Armstrong

Plaintiff Nicholas Bart Ellis and Defendants A. Navarro, F. Juarez and B. Gardner
(collectively, the “Parties”)¹ hereby stipulate as follows:

STIPULATION

WHEREAS the Parties have met and conferred regarding the schedule set in the Court’s Order for Pretrial Preparation (Dkt. 49), as modified by the Stipulation and Order Modifying Dates In Order For Pretrial Preparation (“Pretrial Preparation Order”, Dkt. 53) and the Stipulation and Order Regarding Discovery (“Discovery Order,” Dkt. 65).

WHEREAS the parties have completed the depositions of all fact witnesses – thirteen (13) depositions in total – except for the deposition of Defendant F. Juarez;

WHEREAS Defendant Juarez sustained a significant medical condition in or around late December 2011 and is presently unavailable for deposition;

WHEREAS Plaintiff noticed Defendant Juarez’s deposition for Tuesday, January 10, 2012 at Pelican Bay State Prison (“Pelican Bay”);

WHEREAS in advance of Defendant Juarez’s noticed deposition, his counsel informed Plaintiff that because of Defendant Juarez’s medical condition, his deposition could not proceed;

WHEREAS on January 11, 2012, Defendant Juarez’s counsel informed Plaintiff’s counsel that Defendant Juarez expected to return to work at Pelican Bay on or around January 23, 2012 and that his deposition could be scheduled thereafter;

WHEREAS on January 20, 2012, Defendant Juarez’s counsel informed Plaintiff’s counsel that Defendant Juarez’s recovery was proceeding slower than anticipated, but that Defendant Juarez expected to return to work at Pelican Bay on or around January 30, 2012;

WHEREAS as of February 6, 2012, Defendant Juarez’s counsel have been informed that Defendant Juarez’s medical condition is expected to improve, but Defendant Juarez has not been able to provide a date certain for his deposition;

¹ On June 18, 2010, the Parties entered into a Stipulation and [Proposed] Order voluntarily dismissing Defendant C.E. Wilber pursuant to Federal Rule of Civil Procedure 41(a)(1)(A). Dkt. 34.

1 WHEREAS both Plaintiff's counsel and Defendants' counsel will need to travel to
2 Pelican Bay to conduct the deposition of Defendant Juarez;

3 WHEREAS the Parties' expert witnesses require additional time to incorporate
4 information from the deposition of Defendant Juarez for inclusion in their written reports;

5 WHEREAS the Parties intend to conduct depositions of each other's designated
6 expert witnesses following the disclosure of expert witness reports;

7 WHEREAS the Parties require additional time to conduct the fact and expert
8 witness discovery described above;

9 WHEREAS based on prior communications with the Court and the Court's
10 Scheduling Notes published on the Court's website, counsel understand that the Court will
11 not be available to set trial in this matter for any date in the month of April 2012;

12 WHEREAS lead trial counsel for Defendants, Randy Andrada, is scheduled to be in
13 trial in San Mateo County Superior Court from April 30, 2012 through May 4, 2012;

14 WHEREAS lead trial counsel for Defendants, Randy Andrada, will be unavailable
15 for trial from May 17, 2012 through May 22, 2012 on account of the fact that he will be in
16 Pennsylvania for his daughter's graduation from Villanova University;

17 WHEREAS lead trial counsel for Defendants, Randy Andrada, is scheduled to be in
18 trial in San Joaquin County Superior Court from June 11, 2012 through June 22, 2012;

19 WHEREAS lead trial counsel for Plaintiff, Marc H. Axelbaum, will be unavailable
20 for trial in July 2012;

21 WHEREAS lead trial counsel for Defendants, Randy Andrada, is scheduled to be in
22 trial in Alameda County Superior Court from August 6, 2012 through August 10, 2012;

23 WHEREAS one of Plaintiff's designated expert witnesses is unavailable for trial
24 from August 11 through August 17, 2012 and Plaintiff's other designated expert witness is
25 unavailable (traveling out of the country) for the month of August 2012;

26 WHEREAS at least one witness employed at Pelican Bay is unavailable for trial in
27 the month of August 2012;

28

WHEREAS lead trial counsel for Defendants, Randy Andrada, is scheduled to be in trial in Alameda County Superior Court from August 31 through September 28, 2012;

WHEREAS the Parties agree to the extension of dates set in the Pretrial Preparation Order and Discovery Order to allow sufficient time for discovery and trial preparation;

WHEREAS the Parties agree that this Stipulation and Proposed Order supersedes the joint Stipulation and Proposed Order Modifying Dates In Order For Pretrial Preparation (Dkt. 78) filed by the Parties on January 24, 2012;

NOW, THEREFORE, the Parties, through their undersigned counsel, stipulate and request that the Court order that the pretrial dates set forth in the Pretrial Preparation Order and Discovery Order be modified as follows:

| Event | Operative Date, per Pretrial Preparation Order (Dkt. 53) and Discovery Order (Dkt. 65) | [Proposed] Revised Date |
|---|--|-------------------------------|
| Expert Discovery Cut-Off | January 25, 2012 | June 29, 2012 |
| Parties to Meet and Confer re Pretrial Preparation | January 31, 2012 | July 31, 2012 |
| Joint Pretrial Statement; Trial Briefs; Witness Lists; Designation of Discovery Excerpts; Proposed Jury Instructions, Voir Dire and Verdict Forms; Exhibits Due | February 7, 2012 | August 7, 2012 |
| Motions in Limine and Objections to Evidence Due | February 14, 2012 | August 21, 2012 |
| Oppositions to Motions in Limine and Objections to Evidence Due | February 21, 2012 | September 4, 2012 |
| Replies to Motions in Limine and Objections to Evidence Due | February 28, 2012 | September 18, 2012 |
| Pretrial Conference | March 6, 2012, 1pm | September 25, 2012, 1:00pm |
| Trial begins | March 12, 2012, 8:30am | October 1, 2012, 8:30am |

1 All other terms of the Pretrial Preparation Order and Discovery Order will remain
2 the same.

3 Dated: February 6, 2012

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8 By /s/ Wesley M. Spowhn
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13 By /s/ Matthew Roman
14 Matthew Roman

15 Attorneys for Defendants
16 SERGEANT A. NAVARRO;
CORRECTIONAL OFFICER F. JUAREZ
17 CORRECTIONAL OFFICER B. GARDNER; AND
APPEALS COORDINATOR C.E. WILBER

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, Wesley M. Spowhn, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the signatory listed above.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on February 6, 2012, at San Francisco, California.

By /s/ Wesley M. Spowhn
Wesley M. Spowhn

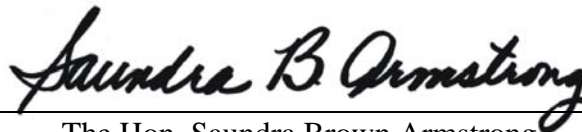
Attorney for Plaintiff NICHOLAS BART ELLIS

ORDER

| Event | Operative Date, per Pretrial Preparation Order (Dkt. 53) and Discovery Order (Dkt. 65) | Revised Date |
|---|---|----------------------------|
| Expert Discovery Cut-Off | January 25, 2012 | June 29, 2012 |
| Parties to Meet and Confer re Pretrial Preparation | January 31, 2012 | June 29, 2012 |
| Joint Pretrial Statement; Trial Briefs; Witness Lists; Designation of Discovery Excerpts; Proposed Jury Instructions, Voir Dire and Verdict Forms; Exhibits Due | February 7, 2012 | July 3, 2012 |
| Motions in Limine and Objections to Evidence Due | February 14, 2012 | July 10, 2012 |
| Oppositions to Motions in Limine and Objections to Evidence Due | February 21, 2012 | July 17, 2012 |
| Replies to Motions in Limine and Objections to Evidence Due | February 28, 2012 | July 24, 2012 |
| Pretrial Conference | March 6, 2012, 1pm | July 31, 2012, 1:00pm |
| Trial begins | March 12, 2012, 8:30am | September 10, 2012, 8:30am |
| Final Settlement Conference | | August 2012 |

IT IS SO ORDERED.

2/22/2012



The Hon. Sandra Brown Armstrong
United States District Judge